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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,602	03/17/2004	Taketo Itoh	0445-0348PUS1	4176
2292 7590 05/10/2007 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER HILL, LAURA C	
			ART UNIT 3761	PAPER NUMBER
			NOTIFICATION DATE 05/10/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10801602	3/17/2004	ITOH ET AL.	0445-0348PUS1

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FALLS CHURCH, VA 22040-0747

EXAMINER

Laura C. Hill

ART UNIT	PAPER
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3761

20070503

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Office Action Summary	Application No. 10/801,602	Applicant(s) ITOH ET AL.	
	Examiner Laura C. Hill	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2006 and 26 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 5, 9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-5, 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Newly submitted claim 10 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: it is a new species since previously examined claims have the absorbent member low stiffness region formed by modifying the basis weight (see claim 9). The newly submitted claim says the low absorbent member stiffness region is formed by only using either an upper or lower absorbent layer (see lines 2-4).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 10 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Response to Arguments

Applicant's arguments, see pages 6-9, filed 22 December 2006, with respect to the rejection(s) of claim(s) 1, 4-5 and 9 under Gravdahl (US 3,545,441) in view of Buell (US 5,151,092) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Murakami et al. (US 5,669,895)/Buell (US 5,151,092) discussed below.

Specification

The objection to the title has been removed and the **title changed to the following**: Disposable Diaper with Standing Gathers for Easy Article Application In a Standing Position.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 1 as amended is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, there is no support for the limitation "wherein said front and rear portions include a high stiffness region but do not include a low stiffness region" (see lines 25-26). Lines 13-15 of Claim 1 recite that a crotch portion has a "high stiffness region R2 disposed between and separate and distinct from said laterally separated low stiffness regions" (R1). Examiner can find no support in the instant specification or drawings that the front and rear portions A, B include either a high stiffness region R2 or a low stiffness region R1.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4-5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murakami et al. (US 5,669,895) as supported by Buell (US 5,151,092). Murakami discloses an absorbent article such as a disposable diaper (column 2, lines 3-5) having absorbent core 4 that is thickest at its center and thus forming a high stiffness region disposed between and separate and distinct from laterally separated low stiffness regions (regions outside both lateral sides of absorbent core near element 2 in figure 1) being thicker (column 8, lines 11-39) and thus inherently stiffer in the center region adjacent visible pattern 11; wherein the low stiffness regions are only present in the crotch/center portions (figure 1). Note that since the thickness is greatest in the center region, the center region also has a higher bending stiffness and variation in basis weight than in the outer lateral regions since it is well known that an increase in density means there is more material and thus the area has a higher resistance to bending upon application of force. Murakami does not expressly disclose a pair of leg elastic standing gathers or waistbands. Addition of leg elastics and waistbands to absorbent diaper wearing articles is well known to those of ordinary skill in the art as supported by Buell. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the absorbent core of Murakami to be used in a disposable diaper with leg elastics and waistband.

Murakami also does not expressly disclose bending stiffness, leg elastic elongation/extension ratio, change in elongation/effective extension ratio, or crotch portion width values. Bending stiffness is a well-known result effective variable since it is result of the area in which it is measured. Extension ratio is a well-known result effective variable since it is result of the type and number of elastics used. Rate of increase is a result effective variable since it is at least a result of the amount of tensile load applied in a given amount of time. Core width is a result effective variable since it is at least dependent on the overall diaper size. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Murakami/Buell with the aforementioned values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). Furthermore, where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (hours vary).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C Hill
Examiner
Art Unit 3761

LCH



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

